UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

RUSSELL HOFF, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. POPULAR INC., et al., Defendants.	x : : :	Civil Action No. 3:09-cv-01428-GAG/BJM
RUBEN GARCIA, derivatively for the benefit of and on behalf of the Nominal Defendant POPULAR INC., Plaintiff, vs. RICHARD L. CARRIÓN, et al., Defendants, and POPULAR, INC., a Puerto Rico Corporation, Nominal Defendant.	: : : x	Civil Action No. 3:09-cv-01507-JAG/BJM

JOINT MOTION FOR CLARIFICATION
OF THE COURT'S ORDERS REGARDING DISCOVERY SCHEDULE

TO THE HONORABLE GUSTAVO A. GELPÍ, U.S.D.J., AND
THE HONORABLE JAY A. GARCIA-GREGORY, U.S.D.J.:

COME NOW, Plaintiffs and Defendants in the above-captioned actions, *Hoff v. Popular, Inc., et al.* ("*Hoff*") and *Garcia v. Carrión, et al.* ("*Garcia*") (collectively, the "Actions"), represented by their undersigned counsel, and respectfully request clarification of the Court's October 25 and October 28 Orders regarding the discovery schedule in the Actions. (*See Hoff*

Docket No. 185 and *Garcia* Docket No. 120.) For the Court's reference, we summarize the relevant procedural posture of the Actions below:

- On October 9, 2009, the Court consolidated the Actions for purposes of discovery and referred the consolidated cases to Magistrate Judge Bruce J. McGiverin "for a discovery/scheduling/case management conference and disposition of all discovery matters." (*Hoff* Docket No. 88; *Garcia* Docket No. 44.)

- On August 2, 2010, following resolution of motions to dismiss in the *Hoff* action, Judge Gelpí entered an order referring the case to Magistrate Judge McGiverin for an initial scheduling conference. (*Hoff* Docket No. 161.) Among other things, Judge Gelpí's order directed the parties to submit a joint initial scheduling memorandum in advance of the conference. Judge Gelpí's order also provided that "[t]he magistrate judge, upon meeting with counsel shall approve and/or modify the proposed discovery timetable, which shall be final and binding upon all parties," and that any modification to the discovery schedule "must be approved by the Court." The Court thereafter scheduled the initial scheduling conference ("Initial Scheduling Conference") with Magistrate Judge McGiverin for October 5, 2010.

- On September 16, 2010, in accordance with Judge Gelpí's August 2 Order (*Hoff* Docket No. 161), the parties submitted a Joint Initial Scheduling Conference Memorandum, which proposed a consolidated discovery schedule for both Actions (the "Discovery Schedule"). (*Hoff* Docket No. 174; *Garcia* Docket No. 107.)

- On October 4, 2010, Judge Gelpí entered an order directing the parties to discuss the possibility of referring the case to mediation with Magistrate Judge McGiverin at the Initial Scheduling Conference. (*Hoff* Docket No. 178.) At the Initial Scheduling Conference on October 5, Magistrate Judge McGiverin approved the proposed Discovery Schedule set forth in the Joint Initial Scheduling Conference Memorandum and directed the parties to propose a mediator and mediation schedule by October 19, 2010.

- On October 19, 2010, the parties submitted a Joint Informative Motion Regarding Mediation, in which the parties informed the Court that they had selected retired federal Judge Nicholas H. Politan to serve as a mediator in a mediation scheduled between January 11 and 13, 2011. (*Hoff* Docket No. 181; *Garcia* Docket No. 117.)

- On October 20, 2010, Judge Gelpí entered an order directing the parties to "inform whether a stay of proceedings is warranted, pending mediation efforts." (*Hoff* Docket No. 182.) The parties thereafter met and conferred regarding Judge Gelpí's October 20 Order and agreed that a full stay of discovery was not warranted but that the parties would exchange targeted discovery in advance of the mediation. The parties also agreed that they would meet and confer regarding Defendants' objections to Plaintiffs' document requests. Defendants informed Plaintiffs that, subject to their objections, they would continue their document collection efforts notwithstanding the mediation.

- On October 25, 2010, in compliance with the Court's October 20, 2010 Order (*Hoff* Docket No. 182), the parties submitted a Joint Motion in Compliance With Order Regarding Mediation (the "Joint Motion in Compliance"). (*Hoff* Docket No. 184; *Garcia* Docket No. 119.). The Joint Motion in Compliance informed the Court that the parties agreed to exchange targeted discovery in advance of the mediation and to defer more exhaustive document production efforts pending the outcome of the mediation. The parties also proposed modifying the Discovery Schedule by extending the various deadlines therein by thirty days, so as to provide Defendants with sufficient time to complete their document productions in the event the mediation is unsuccessful.

- On October 25, 2010, Judge Gelpí entered an order approving the Joint Motion in Compliance. (*Hoff* Docket No. 185.)

- On October 28, 2010, Judge Garcia-Gregory entered an order denying the Joint Motion in Compliance. (*Garcia* Docket No. 120.) Judge Garcia-Gregory also directed the parties to file a new discovery schedule by November 15, 2010.

* * *

As set forth above, the Court appears to have entered conflicting orders regarding the discovery schedule in the Actions. Judge Gelpí approved the Joint Motion in Compliance, which included the parties' proposed modification to the Discovery Schedule. Judge Garcia-Gregory, however, denied the Joint Motion in Compliance and also directed the parties to submit a new discovery schedule. Thus, it appears that Judge Garcia-Gregory has not only denied the proposed modification to the Discovery Schedule but also rejected the Discovery Schedule, which Magistrate Judge McGiverin approved at the Initial Scheduling Conference.[1] Because the Actions have been consolidated for purposes of discovery, and because the parties are unable to reconcile the October 25, 2010 and October 28, 2010 Orders (*Hoff* Docket No. 185 and *Garcia*

[1] We note that the *Hoff* and *Garcia* dockets do not reflect approval of the Discovery Schedule set forth the Joint Initial Scheduling Conference Memorandum. This may explain the conflicting orders on discovery. The parties apologize to the Court for any confusion.

Docket No. 120), the parties respectfully ask that the Court clarify its directives regarding discovery in the Actions.

As set forth in the Joint Initial Scheduling Conference Memorandum (*Hoff* Docket No. 174; *Garcia* Docket No. 107), the parties jointly submit that the Discovery Schedule presented to and approved by Magistrate Judge McGiverin is appropriate in light of (i) the types of discovery required in the Actions (*i.e.*, merits, class and expert); (ii) the complexity of the accounting issues raised by the *Hoff* and *Garcia* complaints; (iii) the length of the discovery requests already propounded in the Actions and the anticipated additional discovery requests that the parties will likely serve; (iv) the anticipated collection, review and production of millions of pages of hard-copy and electronic documents; and (v) the anticipated number of depositions involving multiple parties and witnesses.

Moreover, although the parties have agreed to mediation and are hopeful that mediation will be successful, they also have agreed that a full stay of discovery is not warranted at this time and that they will continue their document collection efforts pending the mediation. Given the volume of material likely to be collected, reviewed and produced in the Actions, continuation of such efforts is necessary in order to avoid, as much as practicable, any unnecessary delays. The proposed modification to the Discovery Schedule approved by Magistrate Judge McGiverin extends the various deadlines by only thirty days to allow the parties to focus on the mediation and to provide Defendants sufficient time to complete their document productions in the event mediation fails. In all events, the parties intend to move this case forward expeditiously. The parties therefore respectfully request that the Court approve the modified Discovery Schedule presented in their Joint Motion in Compliance (*Hoff* Docket No. 184; *Garcia* Docket No. 119).

WHEREFORE, the parties respectfully request that the Court clarify its October 25 and 28, 2010 Orders (*Hoff* Docket No. 185 and *Garcia* Docket No. 120) regarding the discovery schedule in the Actions and approve the modified Discovery Schedule set forth in the Joint Motion in Compliance (*Hoff* Docket No. 184; *Garcia* Docket No. 119).

WE HEREBY CERTIFY that on this date, we electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all attorneys of record.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 29th day of October, 2010.

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